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No. 85-594

IN THE

Supreme Court of the United States

October Term, 1985

ON-DECK, INC., a New Jersey corporation,

Petitioner,

vs.

DEAN A. and BARBARA J. ROSTAD, GARY GUY WILLEY, and GENERAL SPORTCRAFT, INC., a corporation,

Respondents.

PETITIONER'S REPLY BRIEF

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I. THE QUESTION PRESENTED FOR REVIEW BY RESPONDENTS FAILS TO RECOGNIZE TWO CRUCIAL ASPECTS OF THE CASE.

First, it fails to acknowledge the undisputed fact that there is no evidence that the product involved in this accident reached the State of Minnesota in the stream of commerce. Second, it fails to acknowledge the undisputed fact that the independent distributor of petitioner's product was under no contractual or other obligation to distribute petitioner's product in any particular state, including the State of Minnesota.

The decision to market the product in the State of Minnesota was a decision that rested entirely with respondent, General Sportcraft. Thus, there was a "purposeful availment" of the State of Minnesota by the distributor, but not by the petitioner.

II. PETITIONER'S ALLEGED NATIONAL AND INTERNATIONAL MARKETING SCHEME DID NOT INCLUDE CONDUCT WITHIN THE STATE OF MINNESOTA.

Respondents cite the fact that officers of petitioner's corporation went on promotional trips "throughout the United States". Respondents ignore, however, that there is not a shred of evidence that *any* of the promotional trips took place in the State of Minnesota.

III. THE ATTEMPT BY RESPONDENTS TO DISTINGUISH CASES DECIDED BY THE SUPREME COURT OF THE UNITED STATES FROM THE DECISION OF THE SUPREME COURT OF MINNESOTA IS UNPERSUASIVE.

The respondents cite and quote from *World-Wide Volkswagon Corp. v. Woodson*, 444 U.S. 286 (1980) as not inconsistent with the decision of the Supreme Court of Minnesota. Here, however, as in *World-Wide Volkswagon*, petitioner did not seek indirectly to serve the Minnesota market, but left the decision as to whether to serve it or not entirely in the discretion of the independent national distributor. The fact that some products—although not the product involved in this accident—found their way into the forum jurisdiction was

foreseeable but was also fortuitous and *not the result of a purposeful availment of the Minnesota jurisdiction by petitioner.* The fortuitousness of the events giving rise to the present litigation is two-fold: (1) there is not a scintilla of evidence that the product causing the injury entered Minnesota in the stream of commerce; (2) the fact that respondent, General Sportcraft, without any legal duty to serve the forum jurisdiction, chose to serve the Minnesota market by introducing other products not involved in this litigation into the forum jurisdiction.

The respondents' quotation from *World-Wide Volkswagon* on page 9 of their brief, rather than being helpful to their position, actually detracts from it. Pursuant to the analysis contained in that quotation, it is arguable that On-Deck might have *foreseen* the likelihood that some of its products would find their way into the State of Minnesota, but there is a total void of any conduct in or connection with the forum state by which On-Deck should have reasonably anticipated being haled into court there. Any such anticipation rests with the distributor, which alone had contacts with the State of Minnesota.

Similarly, the quote from *World-Wide Volkswagon* on pages 9 and 10 of their brief falls short of the mark for the same two reasons: (1) there is no evidence that the product causing the injury entered Minnesota in the stream of commerce; (2) there was no *expectation* by On-Deck that the product would be sold in Minnesota; only the chance that the distributor might elect to sell it there.

Finally, the quote from the Minnesota Supreme Court decision on page 10 of respondents' brief that On-Deck contracted with General Sportcraft and other national retailers to serve . . . specifically, the Minnesota market, is devoid of any support in the record.

IV. THE DISTINCTIONS THAT RESPONDENTS ATTEMPT TO MAKE TO FEDERAL COURT OF APPEALS DECISIONS ARE WITHOUT MERIT.

In *Humble v. Toyota Motor Co., Ltd.*, 727 F.2d 709 (8th Cir. 1984), the Eighth Circuit opinion quotes with approval the trial court's conclusion that there was no doubt that the dismissed defendant, Arakawa, could have *foreseen that its product would find its way into the United States and into the State of Iowa.* Arakawa could not have anticipated being haled into Court in Iowa, however, since there was a total lack of contact between Arakawa and the State of Iowa. In similar fashion, petitioner, On-Deck, did not conduct any activities in the State of Minnesota by which it could anticipate being haled into court there. There is simply no valid distinction between placing a component part in the stream of commerce and placing a finished product in the stream of commerce. Here, On-Deck placed other products, not involved in this litigation, in the stream of commerce, but took no direct or indirect effort specifically to serve the Minnesota market. Although it could *foresee* that its products might find their way into Minnesota, it took no specific steps to serve that market.

The respondents' attempted distinction of *Glater v. Eli Lilly & Co.*, 744 F.2d 213 (1st Cir. 1984) is not persuasive. In *Glater*, the court found that none of the *direct* contacts of the defendant with the State of New Hampshire were causally related to plaintiff's injury. Similarly, in the present case, none of the petitioner's alleged *indirect* contacts with the State of Minnesota are causally related to respondents' injury. Likewise, in *Glater*, none of the admitted direct contacts of

Eli Lilly & Company with New Hampshire were causally related to plaintiff's alleged injury in another state. The language of the *Glater* court is instructive on the issue now before the Court, as follows:

> "Where a defendant has certain judicially cognizable ties to the forum state, 'a variety of factors relating to the particular cause of action may be relevant' to the issue of jurisdiction. (Citation omitted). *A consideration of fundamental importance is whether the cause of action arises out of or is related to the defendant's contacts with the forum state.* If so, then 'specific jurisdiction' may be found based on the relationship among the defendant, the forum, and the litigation. (Citations omitted). If, on the other hand, the cause of action is unrelated to the defendant's interstate activities, the issue becomes one of 'general' rather than 'specific' jurisdiction. (citation omitted). *Although minimum contacts suffice in and of themselves for specific jurisdiction under International Shoe, the standard for general jurisdiction is considerably more stringent.* (Citations omitted). The importance of the distinction is illustrated in the present case. (Emphasis supplied) 744 F.2d 213, 215-216.

Here, unlike *Glater*, there were *no direct contacts* by On-Deck with the forum state which even arguably would permit exercise of general jurisdiction over On-Deck. Specific jurisdiction is lacking, even though the accident occurred in the forum state, because the offending product did not enter the forum jurisdiction either directly or indirectly in the stream of commerce.

The respondents' attempted distinction of *Hutson v. Fehr Bros., Inc.*, 584 F.2d 833 (8th Cir. 1978), *cert. denied*, 439 U.S.

983 (1978) falls completely short of the mark. There, the Italian corporation, which was dismissed because of lack of *in personam* jurisdiction, had sold the allegedly defective chain to a British distributor which was given the exclusive right to sell the product throughout North America. Thus, it was *foreseeable* that the chain might find its way into the State of Arkansas, which undeniably is within North America. Since the chain actually reached the State of Arkansas *in the stream of commerce* and since this was undeniably foreseeable by the Italian corporation, the dissenters argued that jurisdiction should be entertained. Notwithstanding this foreseeability, however, the majority ruled against jurisdiction, finding no direct contacts between the Italian corporation and the State of Arkansas.

The case now before the Court argues more strongly against exercise of *in personam* jurisdiction, since in this case, the allegedly offending product was not shown to enter the State of Minnesota in the stream of commerce, whereas, in *Hutson*, there was no dispute that the product had entered the State of Arkansas in the stream of commerce. Otherwise, the two cases are exactly the same in that in each case there was a grant of an exclusive distributorship for the North American continent, but no obligation on the part of the independent distributor to market the products in any specific state, nor any obligation to market the product in the forum state.

V. CONCLUSION

The exercise of *in personam* jurisdiction over petitioner by the State of Minnesota violates due process for the following reasons:

(1) There were *no direct contacts* between petitioner and the forum jurisdiction;

(2) there is no evidence that the product causing injury found its way into the forum jurisdiction in the stream of commerce, either direct or indirect;

(3) other products, not involved in this litigation, reached the forum jurisdiction in the stream of commerce, *but not because petitioner made any purposeful availment* of the forum jurisdiction;

(4) the only purposeful availment of the forum jurisdiction was by respondent, General Sportcraft.

Petitioner, On-Deck, Inc., again respectfully prays that a Writ of Certiorari issue to review the opinion of the Supreme Court of Minnesota filed on August 16, 1985.

Respectfully submitted,

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